Hardial Singh a/l Hari Singh v Abu Talib bin Othman & Anor

HIGH COURT (SHAH ALAM) — CRIMINAL APPLICATION NO 44–29 OF 2002

SURIYADI J

27 MARCH 2003

Criminal Procedure *— Trial — Preliminary objection — Locus standi — Application by person restrained from instituting any legal proceedings by order under art 17 of the Schedule to the Courts of Judicature Act 1964 — Vexatious litigation*

The applicant had filed a criminal application against the respondents. At the outset of the proceedings the counsel for the respondents raised a preliminary objection that the applicant had no locus to file the present application.

Held, dismissing the application:

(1) The litigant had filed a few suits earlier in the courts in Malaysia against various other parties. Being no stranger to the judicial system and the judiciary, on 12 October 1990 Mahadev Shankar J had declared him a vexatious litigant (see *Hardial Singh Hari Singh v Daim Zainuddin & 56 Ors* [1991] 1 CLJ 116) (see p 176B).

(2) At the point of filing this application and at the point of hearing this case, the applicant was yet to be declassified as a vexatious litigant. As he had filed no appeal against the above order, and without any superior court ordering its removal, it must be taken that Mahadev Shankar J's order was still valid. Unless and until the applicant obtained leave from a judge, he was thus persona non grata in court and must be restrained from instituting any legal proceedings (see p 176E–F).

(3) The court was informed that a similar application had been filed by the applicant before KN Segara J in case no 44–12–2002, in Shah Alam, where the matter was heard and dismissed with costs. As in the latter case, he had similarly and flagrantly violated the order of Mahadev Shankar J, when without first obtaining leave appeared before this court. As far as this court was concerned the combined effect of the failure of the applicant to prove that he had obtained any leave in the latter case, together with all the abovementioned reasons, satisfied this court that this was a vexatious litigation, whereupon an abuse of the process of the court had occurred. To arrive at the latter decision it was incumbent to take into account the public and private interests and all the facts of the matter (see pp 176H–177A).

[Bahasa Malaysia summary

Pemohon telah memfailkan satu permohonan jenayah terhadap responden-responden. Pada permulaan prosiding, peguam responden-responden telah membangkitkan bantahan awal bahawa pemohon tidak mempunyai locus untuk memfailkan permohonan ini.

Diputuskan, menolak permohonan itu:

(1) Litigan telah memfailkan beberapa guaman sebelum ini di mahkamah-mahkamah di Malaysia terhadap parti-parti yang lain. Beliau merupakan seorang yang biasa dengan sistem kehakiman dan badan kehakiman, dan pada 12 Oktober 1990 Mahadev Shankar H telah mengisyitharkan beliau sebagai seorang litigan yang menyusahkan (lihat *Hardial Singh Hari Singh v Daim Zainuddin & 56 Ors* [1991] 1 CLJ 116) (lihat ms 176B).

(2) Apabila beliau memfailkan permohonan ini dan apabila kes ini didengar, pemohon belum lagi dipanggil seorang litigan yang menyusahkan. Memandangkan bahawa beliau tidak memfailkan rayuan terhadap perintah di atas, dan tanpa ada mahkamah atasan yang memerintahkan perintah itu diketepikan, ia mesti diambil bahawa perintah Mahadev Shankar H masih sah. Sehingga pemohon mendapat kebenaran daripada seorang hakim, beliau merupakan persona non grata di dalam mahkamah dan mesti disekat daripada memulakan prosiding undang-undang (lihat ms 176E–F).

(3) Mahkamah telah diberitahu bahawa permohonan yang serupa telah difailkan di hadapan KN Segara H di dalam kes no 44–12–2002, di Shah Alam, di mana perkara itu didengar dan ditolak dengan kos. Seperti di dalam kes itu, beliau telah serupanya dan dengan terang-terangan melanggar perintah Mahadev Shankar H, memandangkan beliau belum mendapatkan kebenaran, beliau hadir di hadapan mahkamah ini. Sejauh mana mahkamah ini berkenaan gabungan kesan kegagalan pemohon untuk membuktikan bahawa beliau telah mendapatkan kebenaran di dalam kes itu, bersama dengan alasan-alasan yang dikatakan, telah memuaskan mahkamah ini bahawa ini merupakan litigasi yang menyusahkan, di mana suatu penyalahgunaan proses mahkamah telah berlaku. Untuk memutuskan sebegitu ia adalah wajib untuk mengambil kira kepentingan-kepentingan am dan persendirian dan semua fakta-fakta perkara itu (lihat ms 176H–177A).

Cases referred to

Hardial Singh Hari Singh v Daim Zainuddin & Ors [1991] 1 CLJ 116 (refd)

A *Hardial Singh Sekhon v MDC Sdn Bhd & Anor* [1986] 2 CLJ 244 (refd)

Hardial Singh Sekhon v Pegawai Buruh & Ors [1999] 6 MLJ 257 (refd)

Hardial Singh Sekhon v Talam Leasing Sdn Bhd [2001] 3 MLJ 487 (refd)

B *Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1 (refd)

Hardial Singh Sekhon a/l Hari Singh for the applicant.

Datuk Aziz Abd Rahim (*Aslam Zainuddin* with him) (Peguam Kanan Persekutuan) for the first respondent.

C *Datuk N Chandran* (*Albar & Partners*) watching brief for the first respondent.

PS Yap (*PS Yap & Associates*) for the second respondent.

Suriyadi J: The applicant had filed an application in this court against one D Abu Talib bin Othman, the former Attorney-General of Malaysia, and MDC Sdn Bhd. The former was represented by Senior Federal Counsel Dato' Aziz Abdul Rahim, En Aslam Zainuddin, and Datuk N Chandran of Messrs Albar & Partners, with the second respondent being represented by Mr PS Yap. The applicant, who claimed to be an arbitrator by occupation, chose to appear in person.

E

At the outset of this proceedings, counsel for the respondents posed a preliminary objection, raising the point that the applicant had no locus to file this application, let alone appear before this court. Having considered the arguments before me, I had no hesitation in dismissing the application on several grounds.

F

To begin with, the application was an embarrassment to the court, as it was an incomprehensible piece of document, which was beyond understanding. It was unclear as to what sort of order he was seeking from the court, let alone its foundation. Adverting to his notice of motion (encl 1) I could decipher nine prayers, eg prayer 1 which reads:

G

> Notis usul ini bicara dengan secara ex parte sehingga kebenaran memulakan prosiding untuk dapat keputusan penghakiman 12 Oktober 1990 dan dua perintah digazetkan No 10937 dan No 10938 apabila tidak ketepikan oleh hakim Mahkamah Tinggi sebagai perintah yang tidak adalah perintah muktamad boleh mengetepikan oleh Mahkamah Rayuan.

H

Not only was the application, which was in abominable Bahasa Malaysia, a nightmare to me but beyond comprehension, confusing and meaningless even to the interpreters. Why he did not seek professional assistance was beyond me. I could only conjecture that his self-esteem persuaded him to decide that he needed no help from anyone. In another case where again I self-help was the order of the day, Mahadev Shankar J in *Hardial Singh Hari Singh v Daim Zainuddin & 56 Ors* [1991] 1 CLJ 116 had occasion to opine at p 119:

> A substantial part of the problem in these matters is the fact that En Hardial Singh insists on acting for himself in the belief that he is better qualified legally to do so than any other.

Apart from befuddling me with the gibberish Bahasa Malaysia and its incomprehensible intent and purpose, I found his action exactingly wild and bewilderingly vexatious (*Hardial Singh Sekhon v MDC Sdn Bhd & Anor* [1986] 2 CLJ 244). This litigant who claimed to be an arbitrator by profession, had filed a few suits earlier in the courts in Malaysia against various other parties. Being no stranger to the judicial system and the judiciary, on 12 October 1990 Mahadev Shankar J had declared him a vexatious litigant (*Hardial Singh Hari Singh v Daim Zainuddin & 56 Ors*). The court had pronounced at p 119:

> The interests of justice and the good administration of our courts makes it necessary for me to make another order because it is my finding on all the material before me that this is a proper case for the exercise of the power vested in this court by art 17 of the Sch to the Courts of Judicature Act 1964 which reads:
>
> > Power to restrain any person who has habitually and persistently and without reasonable cause instituted vexatious legal proceedings in any court, whether against the same or different persons, from instituting any legal proceedings in any court save by leave of a Judge. A copy of any such order shall be published in the *Gazette*.

At the point of filing this application and at the point of hearing this case, the applicant was yet to be declassified as a vexatious litigant. As he had filed no appeal against the above order, and without any superior court ordering its removal, it must be taken that Shankar J's order is still valid (*Hardial Singh Sekhon v Pegawai Buruh & Ors* [1999] 6 MLJ 257). Unless and until the applicant has obtained leave from a judge, he is thus persona non grata in court and must be restrained from instituting any legal proceedings.

It must be stressed that, even if he had been interested in appealing against the above restriction order, he was out of time, as the appeal period was 14 days from the date of the order beginning from 12 October 1990. Without stressing the obvious, he is no less than twelve years out of time. It must be emphasized that the legal requirement to have a matter appealed within a given time has always been taken seriously by the courts, and any detraction from that requirement will face the wrath of the court. The very same applicant had first hand experience in *Hardial Singh Sekhon v Talam Leasing Sdn Bhd* [2001] 3 MLJ 487, when his appeal was struck off as a consequence of not filing the record of appeal within the prescribed time.

Further to that I was informed that a similar application had been filed by the applicant before KN Segara J in case no 44–12–2002, also in Shah Alam, where the matter was heard and dismissed with costs. As in the latter case, he had similarly and flagrantly violated the order of Mahadev Shankar J's order, when without first obtaining leave, appeared before me. As far as I was concerned the combined effect of the failure of the applicant to prove that he had obtained any leave in the latter case, together with all the abovementioned reasons, satisfied me that this was a vexatious litigation,

A whereupon an abuse of the process of the court had occurred. To arrive at that latter decision it was incumbent upon me to take into account the public and private interests and all the facts of the matter (*Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1). The court in the latter case had occasion to comment:

B

> It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion *be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case,* focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. (Emphasis added.)

C

In the circumstances of the case I thus had no hesitation in dismissing this application with costs.

D *Application dismissed.*

Reported by Chew Phye Aun

E

F

G

H

I